IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 700 of 2000
in
SPECIAL CIVIL APPLICATION No 4456 of 1999
with
Civil Application No.10320 of 2000
with
LETTERS PATENT APPEAL No 701 of 2000
in
Special Civil Application No.4455 of 1999
with
Civil Application No.10321 of 2000
with
Letters Patent Appeal No.702 of 2000
in
Special Civil Application No.855 of 2000
with
Letters Patent Appeal No.703 of 2000
in
Special Civil Application No.870 of 2000
with
Letters Patent Appeal No.815 of 2000
in
Special Civil Application No.4456 of 1999
with
Civil Application No.10817 of 2000
with
Letters Patent Appeal No.816 of 2000
in
Special Civil Application No.4455 of 1999
with
Civil Application No.10819 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

AKASH SALT INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 700 of 2000
MR TS NANAVATI for Appellant
Mr.A.D. Oza, GOVERNMENT PLEADER for Respondent No. 1
Mr.S.I. Nanavati, Sr. Advocate,
with MR PR NANAVATI for Respondent No. 7

2. LETTERS PATENT APPEAL No 701 of 2000
MR TS NANAVATI for Appellant
Mr.S.I. Nanavati, Sr. Advocate,
with MR PR NANAVATI for Respondent No. 1
Mr.A.D.Oza, GOVERNMENT PLEADER for Respondent No. 2

3. Letters Patent Appeal No.702 of 2000
Mr.T.S. Nanavati for the appellant.
Mr.A.D. Oza, G.P. for respondent No.1.
Mr.S.I. Nanavati, Sr. Advocate,
with Mr.P.R. Nanavati for respondent No.4.

4. Letters Patent Appeal No.703 of 2000
Mr.T.S. Nanavati for the appellant.
Mr.A.D. Oza, G.P. for respondent No.1.
Mr.S.I. Nanavati, Sr. Advocate,
with Mr.P.R. Nanavati for respondent No.4.

5. Letters Patent Appeal No.815 of 2000
Mr.S.I. Nanavati, Sr. Advocate,
with P.R. Nanavati for the appellants.
Mr.A.D. Oza, G.P. for respondent No.1.
Mr. T.S. Nanavati, Advocate, for respondent No.6.

6. Letters Patent Appeal No.816 of 2000
Mr.S.I. Nanavati, Sr. Advocate,
with P.R. Nanavati for the appellants.
Mr.A.D. Oza, G.P. for respondent No.1.
Mr. T.S. Nanavati, Advocate, for respondent No.6.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/03/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE P.B.MAJMUDAR)

1. The present Letters Patent Appeals are directed against the order of the learned single Judge, by which the learned single Judge disposed of a group of writ petitions, viz., Special Civil Application Nos. 4455 of 1999, 4456 of 1999, 855 of 2000 and 870 of 2000. Since the issue involved in all the Letters Patent Appeals is same and since they arise out of the common order of the learned single Judge, we are disposing of all these Letters Patent Appeals by this common judgment.

2. Two concerns, viz. Messrs. Dolly Salt Industries and Messrs. Akash Salt Industries, applied on 1.12.1995 on long term lease basis certain area admeasuring 330 acres, situated outside Survey No.169 of Village Dhrub, Taluka Mundra, District, Kutch. Both the aforesaid appellants had applied for granting lease in their favour for the purpose of salt pan. Both Messrs. Dolly Salt Industries and Messrs. Akash Salt Industries had applied for granting lease for the same activity, i.e. activity related with salt, and accordingly, they had applied for granting them lease on long term basis. The land in question is situated outside Survey No.169 and according to the aforesaid two applicants, the land in question were not measured. The aforesaid two applicants therafter preferred necessary applications in prescribed form. It is the say of the aforesaid two applicants in their writ petitions, viz., Special Civil Application Nos. 4455 of 1999 and 4456 of 1999, that thereafter, the land in question was measured by the D.L.R. and the true copy of the map is annexed as Annexure `D' in their petitions. Initially, the said application was rejected by the Collector on the ground that the said land was required for the backward class Adivasis. The petitioners therafter again approached the Collector by application dated 1.2.1997 on the ground that the petitioners had not received any communication and that if such local backward class persons are required to be given priority after considering their claim, the balance may be considered for allotment to the petitioners. It is the say of the aforesaid petitioners that the Mamlatdar, by his letter dated 13.5.1997 gave a positive opinion. Still, without giving opportunity of hearing and ignoring the positive report in favour of the said two applicants, the Collector, by his order dated 2.6.1998, rejected the application of both the said applicants by a common order. It was rejected on the ground that the area demanded as well as the appurtenant area come within the scope of the port development and

port based industries and that there is a formal demand from the Gujarat Maritime Board. On the said ground, applications were rejected and the demand of the petitioners were accordingly negatived by the Collector. The aforesaid order of the Collector dated 2.6.1998 was carried further by the applicants before the Additional Chief Secretary (Appeals). The Additional Chief Secretary (Appeals), by his order dated 23rd February, 1999, allowed the said revisions and the matter was remanded to the Collector for considering the questions in consonance with the directions and guidelines contained in the Resolution dated 31.12.1981. The order of the Additional Chief Secretary (Appeals) is annexed as Annexure `J' in the petitions filed by the aforesaid two applicants, which is dated 23rd February, 1999. It is the say of the aforesaid two petitioners that in spite of the fact that they have taken No Objection Certificate from various Departments and since they have complied with all the pre-clearances as required, still, the Collector has not taken decision for allotment of the land in their favour and that he is sitting tight over the matter. It is also the say of the petitioners that they have reliably learnt that much after the application of the aforesaid two petitioners, respondents 6 and 7, i.e. Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited, put up their claim for allotment of approximately 500 acres of land abutting towards the seaside about 10 K.Ms. from Survey No.169 of Village Dhrub towards the land, being Port of Navinal Island, for the purpose of Petrochemical Polypropylene Plant. It is the say of the petitioners that the application of respondents 6 and 7 is later in point of time. It is also the say of the petitioners that since the survey was not carried out, the possession is not handed over to the aforesaid two parties, i.e., respondents 6 and 7. It is the say of the petitioners that by order dated 23rd April, 1999, the Collector had allotted approximately 500 acres of land to respondents 6 and 7. It is stated that no such land could have been allotted to respondents 6 and 7 and the said action is absolutely illegal, arbitrary and the same is nothing but favouritism in favour of respondents 6 and 7. It is the say of the petitioners that the Additional Chief Secretary had remanded the matter to the Collector. The Collector was required to pass appropriate order in favour of the petitioners. Instead, he sat tight over the matter by not deciding the matter after the same was remanded by the Additional Chief Secretary. Under these circumstances, the aforesaid two petitioners, i.e. Messrs. Dolly Salt Industries and Messrs. Akash Salt Industries filed respective writ petitions, being Special

Civil Application Nos. 4455 of 1999 and 4456 of 1999, before the learned single Judge for a direction against the Collector to forthwith comply with the order of the Additional Chief Secretary, i.e. respondent No.2 in the Special Civil Application, and for allotting necessary land to each of the aforesaid applicants which they have demanded. They have also prayed that the order dated 23rd April, 1999, which is at Annexure `M' to the petition, i.e. the order passed in favour of respondents 6 and 7 of the Special Civil Application, should not be given any effect by the authority. Accordingly, the aforesaid two Special Civil Applications were filed by Messrs. Dolly Salt Industries and Messrs. Akash Salt Industries seeking appropriate direction for allotting the land in question in their favour.

3. There are other two writ petitions, viz. Special Civil Application Nos. 855 of 2000 and 870 of 2000, which were filed on behalf of Messrs. Adani Chemicals Limited and Messrs. Adani Port Ltd., arrayed as respondents 6 and 7 in Special Civil Application Nos. 4455 of 1999 and 4456 of 1999. It is the case of the aforesaid two petitioners in their Special Civil Applications that the said petitioners are Public Limited Companies, registered under the Companies Act, 1956, that on 10th January, 1994, permission for captive jetty was granted to them and on 11th September, 1996, No Objection Certificate was issued in their favour by the Gujarat Maritime Board. On 30.12.1996, the petitioners made an application to the concerned Mamlatdar for allotment of land of 500 acres. On 12th September, 1997, the Gujarat Maritime Board wrote a letter to the Collector of Bhuj, instructing him not to allot any of the lands within the port area. The said petitioners had deposited the amount towards the price of land and obtained a receipt on 10th December, 1997. The State Government issued Notification dated 21st January, 1998, declaring the Port limit. On 1st June, 1998, Gujarat Maritime Board wrote a letter to the petitioners to utilise the land in question only for the purpose of Port related and Port development activity. The petitioners on 9th June, 1998, requested to change their user from Industrial use to Port back up and related use, and the said request was granted. It is also their case that on 29th January, 1999, the Gujarat Maritime Board issued a letter mentioning that the land is earmarked for development of Mundra Port. On 23rd February, 1999, the District Collector issued order, allotting the land in question in favour of the petitioners. According to the petitioners, therefore, the Additional Chief Secretary, Revenue Department (Appeals) should not have remanded the matter for

consideration in favour of the aforesaid two salt manufacturers, as, according to these petitioners, the land which they have demanded overlaps with the land which have already been allotted to these petitioners. The order of the Additional Chief Secretary dated 2nd March, 1999 is also, therefore, challenged by way of filing these two writ petitions, viz., Special Civil Application Nos. 855 of 2000 and 870 of 2000.

4. Since the aforesaid four petitions, i.e. two petitions filed by Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries (Spl.C.A.Nos. 4455 of 1999 and 4456 of 1999), as well as the two petitions filed by Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited (Spl.C.A.Nos. 855 of 2000 and 870 of 2000), involve common points of law and facts, all the four petitions were heard together by the learned single Judge.

5. The learned single Judge, by his order dated 4th October, 2000, set aside the order passed by the revisional authority, i.e. the Additional Chief Secretary (Appeals), Revenue Department, in Revision Application Nos. 24 of 1998 and 25 of 1998, dated 3/2-3/1999. Accordingly, the revision application which was filed by Messrs. Akash Salt Industries, and Messrs. Dolly Salt Industries before the Revisional Authority was ordered to be again decided after hearing all concerned parties, including Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited. It was also ordered that the revisional authority may also give opportunity to the Maritime Board also for hearing.

6. The learned single Judge allowed Special Civil Application Nos. 855 of 2000 and 870 of 2000, i.e. Special Civil Applications which were filed by Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited, by setting aside the order of the Revisional Authority which was passed in favour of Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries and the matter was again sent back to the Revisional Authority. So far as Special Civil Application Nos. 4455 of 1999 and 4456 of 1999 are concerned, i.e. Special Civil Applications filed by Messrs. Akash Salt Industries and Messrs. Dolly Industries, the same were dismissed. Accordingly, all the aforesaid four Special Civil Applications were disposed of by the learned single Judge by dismissing two Special Civil Applications (Special Civil Application Nos. 4455 of 1999 and 4456 of 1999 filed by Messrs. Akash Salt Industries and Messrs. Dolly Industries) and allowing two Special Civil

Applications (Spl.C.A.Nos. 855 of 2000 and 870 of 2000 filed by Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited), by setting aside the order of the revisional authority which was passed in favour of Messrs. Akash Salt Industries and Messrs. Dolly Industries.

7. Being aggrieved by the said order of the learned single Judge, two Appeals, i.e. Letters Patent Appeal Nos. 700 of 2000 and 701 of 2000 were filed by Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries, respectively. So far as Letters Patent Appeal No.702 of 2000 is concerned, the same has been filed by Messrs. Dolly Salt Industries in so far as the learned single Judge allowed the petition, i.e. Special Civil Application No.855 of 2000, filed by Messrs. Adani Chemicals Limited and another, by setting aside the order passed by the revisional authority and sending the matter back. Similarly, so far as Letters Patent Appeal No.703 of 2000 is concerned, the same has been filed by Messrs. Akash Salt Industries challenging the order passed by the learned single Judge in Special Civil Application No.870 of 2000, setting aside the order of the revisional authority which was passed in their favour. Accordingly, two Letters Patent Appeals have been filed by Messrs. Akash Salt Industries and two Appeals by Messrs. Dolly Industries challenging the order of the learned single Judge dismissing the Special Civil Applications, as well as challenging the order of the learned single Judge in allowing the Special Civil Applications filed by Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited.

8. So far as the other two Appeals, i.e. Letters Patent Appeal Nos. 855 of 2000 and 870 of 2000, are concerned, they have been filed by Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited in so for as the learned single Judge remanded the matter to the Additional Chief Secretary (Appeals) and not fully allowing their Special Civil Applications by rejecting the claim of Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries totally. Accordingly, there are six Letters Patent Appeals which are filed before this Court, four at the instance of Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries, and two at the instance of Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited. As common facts and law are involved and since they are from a common judgment of the learned single Judge, all these Letters Patent Appeals are disposed of by this common judgment.

9. Mr.T.S. Nanavati, appearing in Letters Patent

Appeal Nos. 700, 701, 702 and 703 of 2000, which are filed on behalf of Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries, has argued that the aforesaid two Salt Industries have filed the aforesaid Special Civil Applications for a direction against the Collector to decide their matters on the basis of the order passed by the Additional Chief Secretary (Appeals) in their revision applications. It is argued by him that the action on the part of the Collector is absolutely illegal and arbitrary for sitting tight over the matter and not adjudicating the same. He further argued that there is nothing on record to show that the land in question is overlapping with the land allotment of which is made in favour of original respondents 6 and 7, i.e. Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited. Mr.Nanavati has also argued that only in order to favour opponents 6 and 7, at the instance of the Minister concerned, the Collector had failed to decide the matter in their favour in spite of the remand order of the Additional Chief Secretary (Appeals). Mr.T.S. Nanavati also argued that in any case, the land in question for which they have made the demand was not required by the Gujarat Maritime Board at all and that there was already a report by the Mamlatdar in their favour. It is his say that they had even obtained No Objection Certificate from the Forest Department and the aforesaid area which is allotted to them was not demanded at any time by the Maritime Board. He also submitted that, in any case, even if N.O.C. is required, the Department has to obtain the same and not by the petitioners. He also submitted that in the facts and circumstances of the case, the learned single Judge should have allowed their petitions and necessary directions should have been given to the Collector for allotment of land to the present appellants. Mr.T.S. Nanavati has further argued that in any case, the demand of his client was earlier in point of time as compared to the demand made by opponents 6 and 7 herein. He also further submitted that in any case, the land in question could not have been allotted in favour of opponents 6 and 7 as the Government Land could not have been given at such a throwaway price and that the said allotment also in favour of opponents 6 and 7 would be against the public interest. It was further argued that appeals filed by Messrs. Akash Salt Industries and Messrs. Dolly Industries are required to be allowed.

10. Against the aforesaid argument, Mr.A.D. Oza, Government Pleader, submitted that the area in question is part of the Port area and, therefore, No Objection Certificate from the Gujarat Maritime Board is a must.

He further submitted that when the Additional Chief Secretary (Appeals) decided the revision applications filed by Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries, the orders of allotment of land made in favour of opponents 6 and 7 were not placed before him and, therefore, after the matter was remanded, the Collector, after considering the aforesaid fact that there is already an allotment order earlier in point of time in favour of opponents 6 and 7, had not taken immediate decision on the basis of the remand order. Mr.Oza has accordingly supported the order of the Collector.

11. Mr.S.I. Nanavati and Mr.Premal Nanavati submitted that the area in question is covered under the port area and that without No Objection Certificate of the Gujarat Maritime Board, no part of the land could have been given away by way of lease in favour of applicants Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries. It was also submitted by Mr.S.I. Nanavati that Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited had applied as back as on 10th January, 1994 to build Captive Jetty at Mundra Port by the State of Gujarat. As against that, Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries had applied for allotment of land on 1.12.1995. He, therefore, submitted that their application was prior in point of time. Not only that, initially, they started industrial activity, but, subsequently, they had applied for change of user, which was also granted to them and that the land is utilised for port activity and not for any other activity. Mr.Nanavati submitted that both Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries are claiming right of allotment of land in their favour, but they have no such vested right in law and in any case, it is not open for them to challenge the allotment made in favour of Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited, especially when the land is allocated in connection with port activity itself and that they are doing the aforesaid activity which is a joint venture with the Maritime Board itself. Mr.S.I. Nanavati further submitted that required No Objection Certificates, if not taken, will be taken by them and that there is nothing in the petition to show that any certificate which is required to be taken is not obtained by them. Mr.S.I. Nanavati further submitted that since both Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited have already received No Objection Certificate from the Maritime Board itself, the claim of Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries cannot now be decided at all and

that there was no reason to send the matter back to the Secretary as the said exercise will be absolutely futile. He submitted that the learned single Judge, therefore, should not have remanded the matter for deciding the claim of Messrs. Akash Salt Industries and Messrs. Dolly Industries in their revision by restoring the said revision applications again on the file of the Additional Chief Secretary (Appeals). He submitted that in view of the facts and circumstances of the case, the claim of the aforesaid Salt Industries for allotment of land is required to be rejected, which is already rejected, and which is overlapping with the land of Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited. He further submitted that the aforesaid two salt industries may claim any other land which is not part and parcel of port land and for that purpose their original application may also be kept pending by which the Government can be asked to allot any other land which is not part and parcel of the port land and which is not overlapping with the present land allotted to the aforesaid two Adani group of Companies.

12. We have heard both the sides at length. It is not in dispute that the land in question for which demand was made by Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries is part and parcel of port area. In that view of the matter, Section 20 of the Gujarat Maritime Board Act, 1981 is required to be considered. Relevant part of Section 20 reads as under :-

> " ... ...
>
> 20. (1) As from the appointed day, in relation to any port,-
>
> (a) all property, assets and funds and all rights to levy rates vested in the State Government for the purposes of the port immediately before such day, shall vest in the Board;
>
> ... ... "

As stated earlier it is not in dispute that the area in question is part and parcel of the port area and, therefore, it is now under the administration of the Gujarat Maritime Board. Therefore, in view of the aforesaid provision, there is a statutory vesting of all

the properties, assets, funds, etc. in the Board. In view of the aforesaid vesting, the aforesaid area can be said to have been vested in the Maritime Board. Both the aforesaid salt manufacturers, i.e. Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries, have not joined the Maritime Board as party. Their petition, therefore, was not required to be entertained in view of the non-joinder of necessary party to the proceedings. But apart from the said fact, when the property vested in the Maritime Board and since it is now part and parcel of the port area, it was incumbent upon the petitioners to have No Objection Certificate from the Maritime Board for the aforesaid salt manufacturing activity. Admittedly, the petitioners have not obtained any such No Objection Certificate, but apart from that, Messrs. Adani Chemicals Ltd. and Messrs. Adani Port Limited, i.e. Appellants in Letters Patent Appeal Nos. 815 of 2000 and 816 of 2000, have already obtained No Objection Certificate to build Captive Jetty in Mundra Port. Therefore, when No Objection Certificate is already granted by the Maritime Board in their favour and their activity is in relation to the port activity itself, it cannot be said that the allotment of land in their favour is, in any way, illegal or arbitrary. The purpose for which demand for the land in question is made by Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited is different than the demand made by Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries. Demand of Messrs. Adani Chemicals Limited and Messrs. Adani Port Limited is for the purpose of developing the port activity itself and, therefore it is in furtherance of port activity while the demand of the aforesaid salt industries is for the purpose of manufacturing salt. Looking to the provisions of the Maritime Board Act and considering the fact that the area in question is covered in port area, there is nothing wrong if ultimately, the land is allotted to the aforesaid two companies for the purpose of construction of Captive Jetty in Mundra Port. It is not open for Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries to say that the requirement of opponent Nos. 6 and 7, i.e. Messrs. Adani Chemicals Ltd. and Messrs. Adani Port Ltd. is not genuine. Considering their future expansion, if the area in question is demanded, it cannot be said that there is no such justification for such demand. Question about giving priority for allotment is required to be considered in the light of the purpose for which such allotment is sought for. Considering the fact that the request for allotment on behalf of Messrs. Adani Chemicals and Messrs. Adani Port is in connection with the port activity itself, we do not think that there is

any arbitrariness involved in the action of the Government if the land in question is given to the aforesaid two Companies for the port activity, especially when the said activity is to be carried out in a joint venture with the Maritime Board itself. Not only that, no objection certificate of the Maritime Board is also obtained by them. Even otherwise, their demand was earlier in point of time, though may be for an industrial purpose, but subsequently, they have been granted permission to change the said user. Even on the basis of priority in making the application, the claim of the said two Companies, i.e. Messrs. Adani Chemicals and Messrs. Adani Port, is having a better footing as compared to the claim of Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries.

13. It is required to be noted that the Adani Group of companies deposited the amount in question towards the price of the land as per the determination of the same under the order of allotment dated 8.10.1997 and on 1.6.1998, Gujarat Maritime Board instructed the Adani Group of Companies to utilise the land in question only for port related activity. Even if the Maritime Board has issued certain clarification to the Government earlier suggesting their requirement by giving certain measurement, that does not mean that in future also, the no objection certificate is not required to be taken if any land from the port area is required to be given to any other purpose. In that view of the matter, we are of the opinion that no arbitrariness or illegality can be attributed against the authority for allotting the land in question to Messrs. Adani Chemicals and Messrs. Port, which was already allotted in their favour before the Additional Chief Secretary (Appeals) decided revision applications filed by Messrs. Akash Salt Industries and Messrs. Dolly Salt Industries. In the order passed by the Additional Chief Secretary (Appeals), there is no reference about such allotment. Not only that, it is not in dispute that the aforesaid two Companies, i.e. Adani Chemicals and Adani Port, were not even heard by the Additional Chief Secretary (Appeals) at the time of hearing the revision application. Under these circumstances, the learned single Judge remanded the matter to the Additional Chief Secretary (Appeals). However, we are of the opinion that in view of the clear cut factual and legal position, it is not necessary to remand the matter to the Additional Chief Secretary (Appeals) again by keeping the claim of the aforesaid two salt industries pending so far as the demand of the present land in question is concerned.

14. At this stage, we may also state that the aforeaid salt industries have no vested right to demand only a particular piece of land in their favour and since they are not even in a position to obtain no objection certificate from the Maritime Board, it is futile now to send the matter back to the Additional Chief Secretary (Appeals).

15. In view of the aforesaid discussion, we do not find any substance in the argument of Mr.T.S. Nanavati that the Mamlatdar had given favourable reply in their favour. According to us, the recommendation from the Mamlatdar for recommending the allotment of the land in favour of the aforesaid two salt industries, viz., Akash Salt Industries and Dolly Salt Industries, is of no importance or relevance. In the port area, without consulting and without no objection certificate, no piece of land could have been allotted to any one. In our opinion, the Additional Chief Secretary (Appeals) clearly erred while passing the order on 3.2.1999, by which he allowed the revision application filed by the two salt industries on the ground that no objection certificate of Maritime Board is not required as the land in question does not fall within the land which is demanded by the Maritime Board. As stated earlier, it is not in dispute that the area in question is within the port area and, therefore, it was incumbent upon the applicant to have the no objection certificate. But apart from that, Maritime Board had already given no objection certificate in favour of Messrs. Adani Chemicals and Messrs. Adani Port and when the area for which demand is made by the salt industries is overlapping with the area allotted to Messrs. Adani Chemicals and Messrs. Adani Port, there is no question of considering their claim for this particular area.

16. At this stage, reference is also required to be made to the affidavit-in-reply filed by Mr.Kamal Dayani, Collector, Kutch, which is at page 142 of the compilation in Letters Patent Appeal No.701 of 2000 filed by Messrs. Dolly Salt Industries. It is stated by the Collector in paragraph 3 of his reply that the petitioner has suppressed certain material facts from respondent No.2, i.e. Additional Chief Secretary (Appeals), and while dealing with the revision application of the petitioner, respondent No.2 has proceeded on the basis that the land in question does not overlap with the land allotted to respondents 6 and 7. However, in fact, after examining the record, it was clear that the land claimed by the petitioner from Survey No.169 of Village Dhrub is overlapping with the land allotted to respondents 6 and 7

herein, vide order dated 8.10.1997. Under the circumstances, the entire basis of the petition is misconceived and misconstrued, both in law as well as on facts. It is also stated in paragraph 4 of the reply that the petitioner has applied for the land in question somewhere on 1st December, 1995 and, initially, that application was dismissed mainly on the ground that the land demanded by the petitioner was also demanded by certain people belonging to backward class. Thereafter, on 15.2.1997, the petitioner appears to have given a revised application and on the basis of the revised application, a report dated 13.5.1997 has been forwarded by the Mamlatdar to the Deputy Collector, and only certain recommendations were made by the Mamlatdar. Pursuant to the said report dated 13.5.1997, submitted by the concerned Mamlatdar, the Deputy Collector, vide his report dated 29th May, 1997 has further submitted a report to the respondent, inter alia, recommending the case of the petitioner and it was specifically mentioned that prior to considering the case of the petitioner, necessary opinion of the Gujarat Maritime Board may be sought, as required. It is also further stated in the said reply that respondent Nos. 6 and 7 were granted permission by the State of Gujarat to build a Captive Jetty at Mundra Port vide permission dated 10th January, 1994 and that it appears that after the said captive jetty project of respondent Nos. 6 and 7 progressed, for providing necessary back up area, the said respondent Nos. 6 and 7 appear to have demanded the land which the petitioner has demanded from the respondent and they also appear to have applied for necessary No Objection Certificate from the Gujarat Maritime Board and that the said No Objection Certificate appears to have been granted by the Maritime Board to respondent Nos. 6 and 7, vide N.O.C. dated 11.9.1996 and after getting necessary No Objection Certificate from the Gujarat Maritime Board, respondent Nos. 6 and 7 have applied for the land in question vide their application dated 30th December, 1996.

17. In the aforesaid background, therefore, it is not possible for us to accept the say of Mr.T.S. Nanavati that the order passed in favour of respondents 6 and 7 is only by way of favouritism and that the Collector did not process their application in spite of direction given by the Additional Chief Secretary (Appeals) or that he deliberately sat silent. Since certain facts are not in dispute, as stated earlier, that the area being part of Port area, that the application of Messrs. Adani Chemicals and Messrs. Adani Port being prior in time and, in fact, they were given no objection certificate by

the Maritime Board itself and that the allotment in their favour is in furtherance of the object sought to be achieved, they have been given the land in connection with port activity itself and that the said Project has to be developed in joint venture with the Maritime Board itself, we do not find that the allotment in their favour is in any way illegal, arbitrary or discriminatory. We are also equally not impressed with the argument of Mr.T.S. Nanavati that the land in question is not overlapping. It seems that even the record of the case has also not been considered by the Additional Chief Secretary (Appeals). We, therefore, do not find any justification in remanding the matter by restoring the revision applications on the file of the Additional Chief Secretary (Appeals) again, as directed by the learned single Judge. Under these circumstances, Appeals filed by Messrs. Adani Chemicals and Messrs. Adani Port, i.e. Letters Patent Appeal Nos. 815 of 2000 and 816 of 2000, are required to be allowed and Appeals filed by the two Salt Industries, i.e. Letters Patent Appeal Nos. 700, 701, 702 and 703 of 2000, are required to be dismissed. The effect of the same is that petitions filed by Adani Group, i.e. Special Civil Application Nos. 855 of 2000 and 870 of 2000, shall stand allowed and the order of the learned single Judge, remanding the matter to the Additional Chief Secretary (Appeals) is quashed and set aside. We may, however, clarify that the State Government may consider the claim of both the Salt Industries for allotment of land for the purpose of salt manufacturing activity in any other suitable area, which may not be a part of Port area and for that purpose, their original application may be treated to have been kept on file of the Collector so that they may not lose their priority in getting other land. The Collector accordingly may consider their claim for allotment of land in any other area except the area in question, which is involved in the present proceedings. The aforesaid aspect of allotment of any other land in their favour may be considered by the Collector as early as possible and preferably within a period of three months from today in accordance with the Rules.

18. Letters Patent Appeals 700, 701, 702 and 703 of 2000 are accordingly dismissed subject to the aforesaid direction. Letters Patent Appeal Nos. 815 and 816 of 2000 are allowed. All the Civil Applications are accordingly disposed of. Interim relief, if any, shall stand vacated. No order as to costs.

March 2, 2001. (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

***

(apj)